IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 9TH AUGUST 2007 / 18TH SRAVANA 1929

RSA.No. 328 of 2007(E)

AS.11/2005 of SUB COURT, HOSDRUG
OS.131/2000 of MUNSIFF COURT, HOSDRUG
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: APPELLANTS/APPELLANTS/DEFENDANTS
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1. M/S. ARANYAK AYURVEDIC CLINIC PVT. LTD.,
REP. BY ITS MANAGING DIRECTOR, RADHAKRISHNAN NAIR,
AGED 64 YEARS, S/O. KRISHNAN NAIR, NARANTHATTA
COMPOUND, NEAR SURGI CARE HOSPITAL, KOTTACHERY,
KANHANGAD, HOSDURG TALUK, KASARAGOD DISTRICT.

2. THE MANAGER,
ARANYAK AYURVEDIC CLINIC, KOTTACHERY.

BY ADV. SRI.T.MADHU

RESPONDENTS: RESPONDENT/PLAINTIFF

DR. P.V.KELU, AGED 56 YEARS,
S/O. P.V.KELU, GOVERNMENT SURGEON, KOTTACHERRY,
RESIDING AT NARANTHATTA COMPOUND,
P.O.KANHANGAD.

BY ADV. SRI.D.KRISHNA PRASAD(CAVEATOR)
SRI.D.KRISHNA PRASAD

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 09/08/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR,J.

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R.S.A. NO. 328 OF 2007

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Dated this the 9th day of August, 2007

JUDGMENT

Defendants in O.S.131/2000 on the file of Munsiff Court, Hosdurg are the appellants. Plaintiff is the respondent. Respondent instituted the suit seeking a decree for permanent prohibitory injunction restraining appellants from causing any obstruction to the plaint B schedule road. Case of appellants is that plaint schedule property and the property of the appellants as well as the remaining property nearby originally belonged to the family of Kodoth Radha and others who divided the property under Ext.A1 partition deed on 7.3.1991 and in that partition item No.1 of plaint A schedule property was exclusively allotted to the share of Kodoth Gopinathan Nair as per schedule H and item No.2 was allotted to the share of Kodoth Radha as per schedule F and later Kodoth Gopinathan Nair sold item No.1 of plaint A schedule property to

Thyagarajan Nair and his wife Indira as per Ext.A2 sale deed dated 1.7.1993 and Kodoth Radha in turn sold item No.2 of the plaint A schedule property to Thyagarajan Nair and his wife Indira as per Ext.A3 sale deed and since then plaint A schedule properties have been in the possession and enjoyment of Thyagarajan Nair and Indira and while so under Ext.A4 sale deed dated 9.11.1999, respondent purchased the property and since then he has been in absolute possession and enjoyment of the properties. It was contended that plaint B schedule property is a road which leads to the plaint A schedule properties from the main road which is situated in the eastern side of the property and that road is the only access to the plaint A schedule properties and plaint B schedule road originally belonged to Radha and others and was provided as an access to the different plots inside the compound under Ext.A1 partition deed and thereby respondent has acquired a quasi easement right of way and he has every right to use the

road having a width of 20 links and appellants are not entitled to cause any obstruction by putting up a gate in the B schedule road. Appellants resisted the suit contending that plaint B schedule property is part and parcel of the properties belonging to first appellant and it is not a road which leads to the plaint A schedule properties as contended. It was further contended that first appellant is in exclusive possession and enjoyment of 24 cents of property in R.S. No.84/3 of Bella Village and an Ayurvedic Hospital is being run therein and the property originally belonged to late Madhavi Amma and her children divided it under Ext.A1 partition deed and in that partition 24 cents of the land now possessed by the appellants including plaint B schedule property being the first item of schedule 1 was kept common and later under Ext.B1 sale deed dated 6.12.1999, first appellant purchased the properties from all the sharers and respondent is not entitled to have any right of easement over that property and the suit is to be dismissed.

2. Learned Munsiff on the evidence of Pws. 1 and 2 and DW1 and Exts.A1 to A4 and Exts.B1 to B4 and Exts.C1 to C6, granted a decree in favour of respondent restraining appellants from causing any obstruction to the user of plaint B schedule road which is marked as plot 'C' in Ext.C3 plan submitted by the Commissioner, upholding the claim of respondent that he has quasi easement right over the same. Appellants challenged the decree and judgment before Sub Court, Hosdrug in A.S.11/2005. Learned Sub Judge on reappreciation of evidence confirmed the findings of learned Munsiff and dismissed the appeal. It is challenged in the second appeal.

3. Learned counsel appearing for appellants and learned counsel who appeared for respondentby filing a caveat, were heard.

4. The argument of learned counsel for appellants, is that plaint B schedule property is not a road and it is part of the property belonging to first appellant and respondent has no right of

way by easement of necessity to use plaint B schedule road and in such circumstance, the decree granted by courts below are unsustainable. Learned counsel appearing for respondent pointed out that Ext.B1 the sale deed by which appellants obtained right over the property itself shows that plaint B schedule property was a road and it was taken note of by the courts below. It was also argued that the right of easement claimed by respondent is not an easement of necessity but a quasi easement of grant which is provided under Exts.A2 and A3 assignment deed.

5. On hearing the learned counsel and on going through the judgment of the courts below, I do not find any substantial question of law involved in the appeal.

6. Though learned counsel appearing for appellants argued that no road was in existence and plaint B schedule property is not a road as rightly pointed out by learned counsel appearing for respondent, Ext.B1 sale deed by which

appellants obtained right over the property itself disclose that plaint B schedule property is described as a road.

7. Learned Munsiff as well as learned Sub Judge on appreciation of evidence found that plaint B schedule property is a road which was originally available to the whole property which originally belonged to Kodoth Madhavi Amma and was divided under Ext.A1 partition deed whereunder the respective children were allotted respective plots and a portion under schedule 1 was kept common. First appellants and the respondent are assignees from the shares under Ext.A1 partition deed. First appellant purchased the plot with the building kept common, from all the sharers under Ext.B1 sale deed. Exts.A2 and A3 establish a right of quasi easement as claimed by respondent. Courts below rightly relied on the decision of this court in Leela v. Ambujakshy (1989 (2) KLT 142) and upheld the claim of the respondent. As no substantial question of law is involved, appeal is dismissed in

limine.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006